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PART - VII GOVERNMENT OF MEGHALAYA ORDERS BY THE GOVERNOR

NOTIFICATION

The 18th October, 2004.

No.LL(B)10/2005/21.—The following Act passed by Parliamentary and assent by the President of India and published in the Gazette of India, Part I Section 1, on the date below is hereby republished for general information.

A.K. SANGMA,
Under Secretary to the Govt. of Meghalaya,
Law (B) Department.

Name of Ordinance	Ordinance No. and Year	Date of Publication in the Gazette of India
5. Special Tribunals Repeal Act, 2004	Act No. 28 of 2004	27th Dec. 2004
6. Unlawful Activities (Prevention) Amendment Act, 2004.	Act No. 29 of 2004	30th Dec. 2004
7. Enforcement of Security Interest & Recovery of debts Laws (Amendment) Act, 2004.	Act No. 30 of 2004	30th Dec. 2004

THE SPECIAL TRIBUNALS (SUPPLEMENTARY PROVISIONS) REPEAL ACT 2004

**An
Act**

to repeal the Special Tribunals (Supplementary Provisions) Act, 1946.

Be it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows :—

- | | |
|--|--------------------------|
| 1. This Act may be called the Special Tribunals (Supplementary Provisions) Repeal Act, 2004. | Short title |
| 2. The Special Tribunals (Supplementary Provisions) Act, 1946 is hereby repealed. | Repeal of Act 26 of 1946 |

**THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT
ACT 2004**

**AN
ACT**

further to amend the Unlawful Activities (Prevention) Act, 1967.

Be it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows :—

	1. (1) This Act may be called the Unlawful Activities (Prevention) Amendment Act, 2004.	Short title and Commencement.
	(2) It shall be deemed to have come into force on the 21st day of September, 2004.	
37 of 1967	2. In the Unlawful Activities (Prevention) Act, 1967 (herein after referred to as the Principal Act), in the long title, after the word “associations”, the words, “and for dealing with terrorist activities,” shall be inserted.	Amendment of long title.
5 of 1898.	3. In the Principal Act, for the words and figures “Code of Criminal Procedure, 1898”, wherever they occur, the word “Code” shall be substituted.	Substitution of word “Code” for “Code of Criminal Procedure, 1898”.
Amendment of Chapter I.	4. In Chapter I of the Principal Act, for sections 1, 2 and 2A, the following sections shall be substituted, namely :—	
Short title, extent and application.	<p>‘1. (1) This Act may be called the Unlawful Activities (Prevention) Act, 1967.</p> <p>(2) It extends to the whole of India.</p> <p>(3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.</p> <p>(4) Any person, who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.</p> <p>(5) The provisions of this Act apply also to—</p> <p>(a) citizens of India outside India;</p> <p>(b) persons in the service of the Government, wherever they may be; and</p> <p>(c) persons on ships and aircrafts, registered in India, wherever they may be.</p>	37 of 1967.
Definitions.	<p>2. (1) In this Act, unless the context otherwise requires,—</p> <p>(a) “association” means any combination or body of individuals;</p> <p>(b) “cession of a part of the territory of India” includes admission of the claim of any foreign country to any such part;</p>	

(c) "Code" means the Code of Criminal Procedure, 1973;

62 of 1974.

(d) "Court" means a criminal court having jurisdiction, under the Code, to try offences under this Act;

(e) "Designated Authority" means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may specified by the Central Government, or the State Government, by notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "proceeds of terrorism" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, and includes cash and bank account;

(i) "secession of a part of the territory of India from the Union" includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

(j) "State Government", in relation to a Union territory, means the Administrator thereof;

(k) "terrorist act" has the meaning assigned to it in Section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

(m) "terrorist organisation" means organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

(n) "Tribunal" means the Tribunal constituted under Section 5;

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

(p) “unlawful association” means any association,—

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

45 of 1860.

(ii) which has for its object any activity which is punishable under Section 153A or Section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;

(q) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.’

5. In Section 5 of the Principal Act, in sub-section (7), for the word and figures “Chapter XXXV”, the word and figures “Chapter XXVI” shall be substituted.

Amendment of
Section 5.

6. For Section 10 of the Principal Act, the following section shall be substituted, namely:—

Substitution of new
section for Section
10.

“10. Where an association is declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section,—

Penalty for being
member of an
unlawful association,
etc.

(a) a person, who—

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”

Substitution of new Chapters and Schedule for Chapter IV.

7. For Chapter IV of the Principal Act, the following Chapters and the Schedule shall be substituted, namely:—

CHAPTER IV

PUNISHMENT FOR TERRORIST ACTIVITIES

Terrorist Act.

15. Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

Punishment for terrorist act.

16. (1) Whoever commits is a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for raising fund for terrorist act.

17. Whoever raises fund for the purpose of committing a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for conspiracy, etc.

18. Whoever conspires or attempts to commit, or advocates, abets, advices or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act,

Punishment for
harbouring, etc.

shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

19. Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

20. Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for
being member of
terrorist gang or
organisation.

21. Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for
holding proceeds of
terrorism.

22. Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

Punishment for
threatening witness.

4 of 1884.
6 of 1908.
20 of 1952.
54 of 1959.

23. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosive Act, 1884 or the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Enhanced
penalties.

(2) Any person who, with intent to aid any terrorist, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

CHAPTER V

FORFEITURE OF PROCEEDS OF TERRORISM

24. (1) No person shall hold or be in possession of any proceeds of terrorism.

Forfeiture of
proceeds of
terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

25. (1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of Police of State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

Powers of investigating officer and Designated Authority and appeal against order of Designated Authority

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purpose of terrorism;

or

(b) it forms the whole or part of the resources of a terrorist organisation:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, “cash” means—

(a) coins or notes in any currency;

(b) postal orders;

(c) traveller’s cheques;

(d) banker’s drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

Court to order
forfeiture of
proceeds of
terrorism.

26. Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of Section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

Issue of show cause
notice before
forfeiture of
proceeds of
terrorism.

27. (1) No order forfeiting any proceeds of terrorism shall be made under Section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a *bona fide* transferee of such proceeds for value without knowing that they represent of terrorism.

(3) It shall be competent for the court to make an order in respect of property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of Section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the court.

28. (1) Any person aggrieved by an order of forfeiture under Section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

Appeal.

(2) Where an order under Section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under Section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

29. The order of forfeiture made under this Chapter by the court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

Order of forfeiture
not to interfere with
other punishments.

30. (1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under Section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Claims by third party.

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) Where an appeal has been preferred under sub-section (6) of Section 25 and any claimant or objector establishes that the property specified in the notice issued under Section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

31. The Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a civil court required for making a full and fair inquiry into the matter before it.

Powers of Designated Authority.

32. Where, after the issue of an order under Section 25 or issue of a notice under Section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.

Certain transfers to be null and void.

33. (1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter.

Forfeiture of property of certain persons.

(2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

Company to transfer shares to Government.

34. Where any share in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the court, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share.

1 of 1956.

CHAPTER VI

TERRORIST ORGANISATIONS

Amendment of Schedule, etc.

35. (1) The Central Government may, by order, in the Official Gazette,—

(a) add an organisation to the Schedule;

(b) add also an organisation to the Schedule, which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, to combat international terrorism;

- (c) remove an organisation from the Schedule;
- (d) amend the Schedule in some other way.

(2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation only if it believes that it is involved in terrorism.

(3) For the purposes of sub-section (2), an organisation shall be deemed to be involved in terrorism if it—

- (a) commits or participates in acts of terrorism, or
- (b) prepares for terrorism, or
- (c) promotes or encourages terrorism, or
- (d) is otherwise involved in terrorism.

Denotification of a
terrorist
organisation.

36. (1) An application may be made to the Central Government for the exercise of its power under clause (c) of sub-section (1) of Section 35 to remove an organisation from the Schedule.

(2) An application under sub-section (1) may be made by—

- (a) the organisation, or
- (b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been rejected the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of Section 37 within one month from the date of receipt of the order of such refusal by the applicant.

(5) The Review Committee may allow an application for review against rejection to remove an organisation from the Schedule, if it considers that the decision to reject was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order to such affect.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the Schedule.

Review
Committees

37. (1) The Central Government shall constitute one or more Review Committees for the purposes of Section 36.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as maybe prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government and in the case of appointment of a sitting Judge, the concurrence of the Chief Justice of the concerned High Court shall be obtained.

38. (1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Offence relating to membership of a terrorist organisation.

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

39. (1) A person commits the offence relating to support given to a terrorist organisation,—

Offence relating to support given to a terrorist organisation.

(a) who, with intention to further the activity of a terrorist organisation,—

(i) invites support for the terrorist organisation, and

(ii) the support is not or is not restricted to provide money or other property within the meaning of Section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is—

(i) to support the terrorist organisation, or

(ii) to further the activity of the terrorist organisation, or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

40. (1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,—

Offence of raising fund for a terrorist organisation.

(a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purpose of terrorism.

Explanation.—For the purposes of this sub-section, a reference to provide money or other property includes of its being given, lent or otherwise made available, whether or not for consideration.

(2) A person, who commits the offence of raising fund for a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with fine, or with both.

CHAPTER VII

MISCELLANEOUS

Continuance of association

41. An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

Power to delegate.

42. The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under Section 7, or section 8, or both, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing, direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

Officers competent to investigate offences under Chapters IV and VI.

43. Notwithstanding anything contained in the Code, no police officer,—

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of Section 2 of the Delhi Special Police Establishment Act, 1946, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

25 of 1946.

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank, shall investigate any offence punishable under Chapter IV or VI.

Protection of witnesses.

44. (1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in *camera* if the court so desires.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the court;

(b) the avoiding of the mention of the name and address of the witness in its orders or judgements or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

45. No court shall take cognizance of any offence—

Cognizance of offences.

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

1 of 1872.

13 of 1885.
21 of 2000.

46. Notwithstanding anything contained in the Indian Evidence Act, 1872 or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 or the Information Technology Act, 2000 or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case.

Admissibility of evidence collected through the interception of communications.

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the Judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

47. (1) Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate, shall be called in question in any civil court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil court or other authority in respect of any action taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction.

(2) Notwithstanding anything contained in sub-section (1), no civil court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters referred to in Section 36.

48. The provision of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Effect of Act and rules, etc., inconsistent with other enactments.

49. No suit, prosecution or other legal proceeding shall lie against—

Protection of action taken in good faith.

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; and

(b) any serving or retired member of the armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

Saving.

50. Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the navy, army or air force or other armed forces of the Union.

Impounding of
passport and arms
licence of person
chargesheeted
under the Act.

51. Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the court may deem fit.

Power to make
rules.

52. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(b) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(c) determination of the price of the forfeited property under sub-section (2) of Section 28;

(d) the procedure for admission and disposal of an application under sub-section (3) of 36;

(e) the qualifications of the members of the Review Committee under sub-section (2) of Section 37; and

(f) any other matter which is required to be, or may be, prescribed.

Orders and rules to
be laid before both
Houses of
Parliament.

53. Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the sessions or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

THE SCHEDULE*[See sections 2(1)(m) and 35]***TERRORIST ORGANISATIONS**

1. BABBAR KHALSA INTERNATIONAL.
2. KHALISTAN COMMANDO FORCE.
3. KHALISTAN ZINDABAD FORCE.
4. INTERNATIONAL SIKH YOUTH FEDERATION
5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS.
6. JAISH-E-MOHAMMED/TAHRIK-E-FURQAN.
7. HARKAT-UL-MUJAHIDEEN/HARKAT-UL-ANSAR/HARKAT-UL-JEHAD-E-ISLAMI.
8. HIZB-UL-MUJAHIDEEN/HIZB-UL-MUJAHIDEEN PIR PANJAL REGIMENT.
9. AL-UMAR-MUJAHIDEEN.
10. JAMMU AND KASHMIR ISLAMIC FRONT.
11. UNITED LIBERATION FRONT OF ASSAM (ULFA).
12. NATIONAL DEMOCRATIC FRONT OF BODOLAND (NDFB).
13. PEOPLE'S LIBERATION ARMY (PLA).
14. UNITED NATIONAL LIBERATION FRONT (UNLF).
15. PEOPLE'S REVOLUTIONARY PARTY OF KANGLEIPAK (PREPAK).
16. KANGLEIPAK COMMUNIST PARTY (KCP).
17. KANGLEI YAOL KANBA LUP (KYKL).
18. MANIPUR PEOPLE'S LIBERATION FRONT (MPLF).
19. ALL TRIPURA TIGER FORCE.
20. NATIONAL LIBERATION FRONT OF TRIPURA.
21. LIBERATION TIGERS OF TAMIL EELAM (LTTE).
22. STUDENTS ISLAMIC MOVEMENT OF INDIA.
23. DEENDAR ANJUMAN.
24. COMMUNIST PARTY OF INDIA (MARXIST-LENINIST)-PEOPLE'S WAR, ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
25. MAOIST COMMUNIST CENTRE (MCC), ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
26. AL BADR.
27. JAMIAT-UL-MUJAHIDDEN.
28. AL-QAIDA.
29. DUKHTARAN-E-MILLAT (DEM).
30. TAMIL NADU LIBERATION ARMY (TNLA).
31. TAMIL NATIONAL RETRIEVAL TROOPS (TNRT).
32. AKHILBHARAT NEPALI EKTA SAMAJ (ABNES).

Repeal and
saving.

8. (1) The Unlawful Activities (Prevention) Amendment Ordinance, 2004 is hereby repealed.

Ordinance 2 of
2004.

(2) Notwithstanding such repeal, anything done or any action taken under the Principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the Principal Act, as amended by this Act.

**THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY
OF DEBTS LAWS (AMENDMENT) ACT 2004**

**An
Act**

to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and further to amend the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Companies Act, 1956.

Be it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004.

Short title and
Commencement.

(2) Save as otherwise provided in this Act, the provisions of this Act shall be deemed to have come into force on the 11th day of November, 2004.

CHAPTER II

AMENDMENTS TO THE SECURITISATION AND RECONSTRUCTION OF
FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT,
2002

Amendment of
Section 2.

2. In Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter in this Chapter referred to as the Principal Act), in sub-section (1),—

54 of 2002.

(i) after clause (h), the following clause shall be inserted, namely:—

‘(ha) “debt” shall have the meaning assigned to it in clause (g) of Section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993;’;

51 of 1993.

(ii) in clause (j), the words “in accordance with the directions or guidelines issued by the Reserve Bank” shall be omitted;

(iii) in clause (o), for the words “doubtful or loss asset, in accordance with the directions or under guidelines relating to assets classifications issued by the Reserve Bank”, the following shall be substituted, namely:—

“doubtful or loss asset,—

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;’;

(iv) in clause (u), for the words “trustee or any asset management company making investment on behalf of mutual fund or provident fund or gratuity fund or pension fund”, the words, brackets and figures “trustee or securitisation company or reconstruction company which has been granted

a certificate of registration under sub-section (4) of Section 3 or any asset management company making investment on behalf of mutual fund" shall be substituted;

(v) in clause (zd), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or”.

Amendment of
Section 3.

3. In Section 3 of the Principal Act, in sub-section (3), after clause (g), the following clause shall be inserted at the end, namely :—

(h) that securitisation company or reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.”.

Amendment of
Section 4.

4. In Section 4 of the Principal Act, in sub-section (2),—

(a) the words “rejection of application for registration or” shall be omitted;

(b) for the words “such order of rejection or cancellation”, the words “such order of cancellation” shall be substituted.

Insertion of new
Section 5A.

5. After Section 5 of the Principal Act, the following section shall be inserted, namely :—

Transfer of pending
applications to any
one of Debts
Recovery Tribunals
in certain cases.

“5A (1) If any financial asset, of a borrower acquired by a securitisation company or reconstruction company, comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals, the securitisation company or reconstruction company may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.

(2) On receipt of such application for transfer of all pending applications under sub-section (1), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.

51 of 1993.

(3) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any order passed by the Appellate Tribunal under sub-section (2) shall be binding on all the Debts Recovery Tribunals referred to in sub-section (1) as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.

51 of 1993.

(4) Any recovery certificate, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2), shall be executed in accordance with the provisions contained in sub-section (23) of Section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 shall, accordingly, apply to such execution”.

6. In Section 7 of the Principal Act,–Amendment of
Section 7.

(i) after sub-section (2), the following sub-section shall be inserted, namely:–

“(2A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the securitisation company or reconstruction company, and the securitisation company or reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified institutional buyers holding the security receipts or from whom the funds are raised.

2 of 1882.

(b) The provisions of the Indian Trust Act, 1882 shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.”;

(ii) in sub-section (3), for the words “security receipts issued by such company”, the words “security receipts issued under a scheme by such company” shall be substituted.

7. After Section 12 of the Principal Act, the following section shall be inserted, namely:–Insertion of new
Section 12A.

“12A. The Reserve Bank may at any time direct a securitisation company or reconstruction company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of such securitisation company or reconstruction company (including any business or affairs with which such company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act.”.

Power of Reserve
Bank to call for
statements and
information.**8. In Section 13 of the Principal Act,–**Amendment of
Section 13.

(i) after sub-section (3), the following sub-section shall be inserted, namely:–

“(3A) If, no receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17A.”;

(ii) in sub-section (4), for clause (b), the following clause shall be substituted, namely :–

“(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;”.

Amendment of
Section 15.

9. In Section 15 of the Principal Act, in sub-section (1), for the words “when the management of business of a borrower is taken over by a secured creditor”, the words, brackets, letters and figures “when the management of business of a borrower is taken over by a securitisation company or reconstruction company under clause (a) of Section 9 or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of Section 13” shall be substituted.

Amendment of
Section 17.

10. In Section 17 of the Principal Act,—

(a) in sub-section (1),—

(i) for the words “may prefer an appeal”, the words “may make an application along with such fee; as may be prescribed,” shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002;

(ii) after sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 21st day of June, 2002, namely:—

“Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.”;

(iii) after the proviso as so inserted, the following Explanation shall be inserted namely:—

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.”;

(b) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of

possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made thereunder, then notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1)

(6) If the application is not disposed of by the debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may take an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.”.

51 of 1993.

11. After Section 17 of the Principal Act, the following section shall be inserted, namely :—

Insertion of new Section 17A.

“17A. In the case of a borrower residing in the State of Jammu and Kashmir, the application under Section 17 shall be made to the court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

Making of application to Court of District Judge in certain cases.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the court of District Judge under this section.”.

12. In Section 18 of the Principal Act,—Amendment of
Section 18.

(a) in sub-section (1),—

(i) for the words and figures “under Section 17, may prefer an appeal”, the words and figures “under Section 17, may prefer an appeal along with such fee, as may be prescribed” shall be substituted and shall be deemed to have been substituted with effect from the 21st day of June, 2002;

(ii) after sub-section (1), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 21st day of June, 2002, namely:—

“Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower.”;

(iii) after the proviso as so inserted, the following proviso shall be inserted, namely:—

“Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty percent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five percent of debt referred to in the second proviso.”.

Insertion of new
Sections 18A and
18B.**13. After Section 18 of the Principal Act, the following sections shall be inserted, namely:—**Validation of fees
levied.

“18A. Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if the amendments made to Sections 17 and 18 of this Act by Sections 10 and 12 of the said Act were in force at all materials times.

Appeal to High
Court in certain
cases.

“18B. Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under Section 17A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:

Provided that no appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent. of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:

Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five percent of the debt referred to in the first proviso.”

Substitution of new
section for Section
19.**14. For Section 19 of the Principal Act, the following section shall be substituted, namely:—**

Right of borrower to receive compensation and costs in certain cases.

“19. If the Debts Recovery Tribunal or the Court of District Judge, on an application made under Section 17 or Section 17A or the Appellate Tribunal or the High Court on an appeal preferred under Section 18 or Section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers, such borrower shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in Section 18B.”.

Amendment of Section 25.

15. In Section 25 of the Principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) On receipt of intimation under sub-section (1), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.”;

(b) in sub-section (2), for the words “The Central Registrar shall, on receipt of such intimation”, the words, brackets and figures “If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (1), the Central Registrar shall on receipt of such intimation” shall be substituted.

Amendment of Section 28.

16. In Section 28 of the Principal Act, for the words and figures “under Section 12”, the words, figures and letter “under Section 12 or Section 12A” shall be substituted.

Amendment of Section 31.

17. In Section 31 of the Principal Act, in clause (g), for the words “any properties not liable to attachment”, the words and brackets “any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)” shall be substituted.

18. In Section 38 of the Principal Act, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

“(ba) the fee for making an application to the Debts Recovery Tribunal under sub-section (1) of Section 17;

(bb) the form of making an application to the Appellate Tribunal under sub-section (6) of Section 17;

(bc) the fee for preferring an appeal to the Appellate Tribunal under sub-section (1) of Section 18;”.

Amendment of Section 38.

CHAPTER III

AMENDMENTS TO THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

51 of 1993.

19. In Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter in this Chapter referred to as the Principal Act), in clause (h), after sub-clause (i), the following sub-clause shall be inserted, namely:—

Amendment of Section 2.

54 of 2002.

“(ia) the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;”.

20. In Section 19 of the Principal Act, after sub-section (1), the following provisos shall be inserted, namely:—

Amendment of
Section 19.

54 of 2002.

“Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction or Financial Assets and Enforcement of Security Interest Act, 2002, if no such action had been taken earlier under that Act;

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.”.

CHAPTER IV

AMENDMENTS TO THE COMPANIES ACT 1956

1 of 1956.

21. In Section 4A of the Companies Act, 1956 (hereinafter in this Chapter referred to as the Principal Act), in sub-section (1), clause (vii) shall be omitted.

Amendment of
Section 4A.

22. In Section 424A of the Principal Act, in sub-section (1), after the second proviso, the following provisos shall be inserted, namely:—

Amendment of
Section 424A..

54 of 2002.

“Provided also that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, such reference shall abate if the secured creditors, representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower, have taken measures to recover their secured debt under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

Provided also that no reference shall be made under this section if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002.”.

54 of 2002.

CHAPTER V

REPEAL AND SAVING

Repeal and
saving.

23. (1) The Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Ordinance, 2004 is hereby repealed.

5 of 2004.

(2) Notwithstanding such repeal, anything done or any action taken under the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Companies Act, 1956, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act.

54 of 2002.
51 of 1993.
1 of 1956.